IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11767 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNSHINE SPORTS CLUB PVT LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11767 of 2003

MR CL SONI for Petitioner No. 1

MS HANSA PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 27/11/2003

ORAL JUDGEMENT

1. Heard ld.counsel appearing for the parties.

2. By invoking jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner

Shunshine Sports Club Pvt.Ltd.,Jamnagar (hereinafter referred to as "petitioner company" for short) has prayed following main reliefs:-

(A) xxx xxx xxx

(B) be pleased to issue a writ of mandamus and or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the respondents not to prevent or interfere with the activities of the petitioner company, its club members and Guests and the members from playing skill game of Rummy and Marriage at the Club premises belonging to the petitioner company.

(C) be pleased to hold and declare that the provisions of the Bombay Prevention of Gambling Act.1986 do not apply to the legitimate and legal activity of the petitioner company, its club members and their guests of playing skill game of Rummy and Marriage at the club premises belonging to the petitioner company, and further hold and declare that the respondent authorities have got no authority or power to prevent and/or interfere with the activities of the petitioner company and its club and its club members and guests of the members of playing skill game of Rummy and Marriage at the club premises belonging to the petitioner Company, by issuing suitable writ, order or direction under Article 226 of the Constitution of India;

(D) pending hearing and final disposal of this petition, Your Lordship may be pleased to restrain the respondnets, their servants and agents from preventing and interferring with the activities of the petitioner company, its club members and their guests of playing skill game of Rummy and Marriage in the club premises belonging to the petitioner company, till this petition is finally heard and decided.

(E) xxx xxx xxx

(F) xxx xxx xxx

3. The petitioner is a company duly registered under the provisions of the Companies Act, 1956 and as per the objects of the company one gymkhana is being run. The

main activities of the petitioner company is to entertain its members and to run restaurant and other sports and games activities. It is the say of the petitioner that frequent visits by the officers of the State of Gujarat have disturbed the activities and they have been threatened to close games of Rummy and Marriage. According to ld. counsel Mr.Soni, conjunctures or assumptions attributed to the petitioner company being highly unjust, illegal, arbitrary and unreasonable and, therefore, the reliefs as prayed be granted. In support of his submissions, Mr. Soni has taken me through relevant documents produced by the petitioner including certificate of incorporation and Memorandum of Association of the Company. He has mainly placed reliance on the following decisions; namely-

(i) Decision in the case of Sudama Resorts Pvt. Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No. 10105/2001 on 5.11.2001 (Coram: Kundan Singh, J);

(ii) Decision in the case of Kismat Gymkhana Pvt.Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No.3341/2001 on 7.8.2001 (Coram : K.M.Mehta,J);

Mr. Soni has also referred to number of various decisions in the memo of petition wherein similar issues were brought before this Court under Article 226 of the Constitution of India. Mr. Soni has also submitted this Court has also accepted the similar plea in the case of Ahmedabad Gymkhana Pvt. Ltd. v/s State of Gujarat vide judgment dated 12.11.2003 in Spl.C.A. No. 8934/2003.

4. It would be appropriate to quote relevant part of para-5 of the decision of this Court in the case of Sudama Resorts Pvt.Ltd. (supra), wherein the Court has observed that:-

" Therefore, regard being had to the contention coming from the learned counsel Mr. Soni and the decision of the Supreme Court in the case of the State of Andhra Pradesh (supra) and the decisions of this Court it appears that the present petition requires recognition and the rule requires to be made absolute. I order accordingly and direct that the respondents shall not interfere with the game of Rummy and Marriage being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned

respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules."

5. There is an affidavit of resistence filed on behalf of respondent no.3 and it is contended that the petitioner Club is registered as a Sports Club, but under the guise of Sports Club, is doing gambling activities on regular basis. Criminal complaints have been registered with Jamnagar City "B" Division Police Station for the offences punishable under Sections 4 & 5 of the Gambling Act. Affidavit also reveals that on 9.2.2001, club premises was raided and offences under Sections 292 & 114 of IPC was registered. Police department has taken actions against the very club on earlier occasions and the petitioner club had also filed writ petitions being Spl.C.A. No. 1708/1993 and 5259/1993 and one criminal application being Spl.Criminal Application No.1882/1992, but all those petitions have been dismissed by this Court as the petitioner had failed to prove its bonafide and objects of the club. Copies of certain FIRs filed against the petitioner club are also enclosed with the affidavit as Annex.I colly.

6. In response to the query raised by the Court, ld. AGP Ms. Punani has fairly accepted that the petitioner club is doing its activiies since many years and none of the members of the club or their guests visiting premises of the club have been held guilty of the offences punishable under the Gambling Act in reference to the raids carried out at the premises of the company either in the year 1992 or 1993 or 1994. Rummy and Marriage are two games which are skill games and which are being played with playing cards (cat) and these games are not mere chance game. Hence, considering the facts and circumstances of the case and settled legal position, this petition requires to be allowed.

7. In view of above, this petition is allowed. It is hereby ordered and directed that the respondents and his officers shall not interfere with the game of Rummy and Marriage being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other

game which could be said to be objectionable or prohibited under the law or the rules."

8. Rule is made absolute accordingly. No order as to costs. DS permitted.

[C.K. BUCH, J]

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